IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

Supreme Court, U.S.
FILED
APR 10
JOHN F. DAVIS

No. ~~4033~~ 71

SAMUEL J. ABATE, as a Taxpayer of the County of Rockland, and as a Representative of Others Similarly Situated,

—and—

JUNE MOLOF, MINDY BAKER, GLORIA ENGLISH, JOYCE BRAZILLER, LINDA BERNS and JUDY BARTOSIK, as Individuals and as Representatives of Others Similarly Situated,

—and—

CORNELIUS T. O'SULLIVAN, ICHABOD F. SCOTT and MICHAEL J. CLARKE,

Petitioners,

—against—

PAUL F. MUNDT, PHILIP J. ROTELLA, JOHN B. LOVETT, JOHN F. McALEVEY, HAROLD K. GRUNE, constituting the Board of Supervisors of the County of Rockland, THE COUNTY OF ROCKLAND, and CHARLES FURST and MARION DORSEY, as Commissioners of the Board of Elections of the County of Rockland, and THE BOARD OF ELECTIONS OF ROCKLAND COUNTY,

Respondents.

On Writ of Certiorari to the Court of Appeals of New York

BRIEF FOR PETITIONERS JUNE MOLOF *ET AL.*

DORIS FRIEDMAN ULMAN
Counsel for Petitioners June Molof et al.
50 Pine Brook Road
Spring Valley, New York 10977
(914) 352-6630

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Section 1 2

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BRIEF FOR PETITIONERS JUNE MOLOF *ET AL.*

Opinions Below

The opinion of the Supreme Court of the State of New York at Special Term dated July 21, 1969 and modified on July 30, 1969 (not yet reported), is set forth in the Appendix hereto, at pages A10 and A19.

The opinion and dissent of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department dated August 26, 1969 and reported at 33 A. D. 2d 660 is set forth in the Appendix hereto, at pages A24 and A25.

The opinion and dissent of the Court of Appeals of the State of New York dated November 12, 1969, reported at 25 N. Y. 2d 309 is set forth in the Appendix hereto, at pages A34 and A42.

Jurisdiction

The order of the Court of Appeals of the State of New York was made and entered on November 12, 1969 and a copy thereof is set forth in the Appendix hereto, at page A31. The petition for a Writ of Certiorari was filed on January 5, 1970 and granted on February 24, 1970. The jurisdiction of this Court rests upon 28 USCA 1257 (3).

Constitutional Provision Involved

The provision of the United States Constitution involved in the determination of this case is Amendment XIV, Section 1, which states:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

No other statutes, rules or regulations are involved.

Questions Presented

The Board of Supervisors of the County of Rockland was ordered to reapportion itself "with all deliberate speed" by an order of the Supreme Court of the State of New York at Special Term on June 2, 1969. On July 8, 1969, the Board of Supervisors submitted to Special Term for approval a reapportionment plan providing for multi-member districting. Rockland County is made up of five towns. There are no cities in Rockland County. The populations of the several towns vary enormously, as shown by the latest (1969) Federal census:

Stony Point	12,114
Haverstraw	23,676
Orangetown	52,080
Clarkstown	57,883
Ramapo	73,051
Total Population	218,804

The multi-member district plan submitted by the Board of Supervisors of Rockland County on July 8, 1969, provides that each town shall be a district. Using the smallest town, Stony Point, as a base, each town is allocated as many legislators as its population is a multiple of the Town of Stony Point. Thus, the Town of Stony Point is allocated one legislator; the Town of Haverstraw, two;

the Town of Orangetown, four; the Town of Clarkstown, five; the Town of Ramapo, six; making a total of eighteen county legislators. The number of legislators would be subject to change as the population of each town shifts or increases.

Unfortunately, the towns within Rockland County are not exact multiples of the Town of Stony Point, so that the residents of the various towns do not have equal representation on their county legislature. The following table shows the percentage of representation per district, using the 1969 Federal census figures set forth above and the mathematical formula of *Kirkpatrick* v. *Preisler*, 394 U. S. 535, 89 S. Ct. 1225, for determining the difference in population equality:

District	*Population*	*Number of Legislators*	*Population per Legislator*		*Percentage Deviation*
Stony Point	12,114	1	12,114	0.3%	over-represen
Haverstraw	23,676	2	11,838	2.5%	over-represen
Orangetown	52,080	4	13,020	7.1%	under-represen
Clarkstown	57,883	5	11,577	4.8%	over-represen
Ramapo	73,051	6	12,175	0.2%	under-represen

Thus, there is an 11.9 per cent deviation between the highest and the lowest population per legislator (Orangetown is 7.1 per cent below the mathematical ideal and Clarkstown is 4.8 per cent above the mathematical ideal).

The Rockland County Board of Supervisors has not made a good-faith effort to achieve precise mathematical equality. Instead of reapportioning the county legislature with a view toward equal representation for equal numbers of people, the Board first set up its districts as being coterminous with existing town boundaries and let the population deviations fall where they may.

The questions presented are:

1. Is the multi-member district plan proposed by the Board of Supervisors of Rockland County constitutional and, in fact, is any multi-member district plan wherein the district lines are static but the population within each district is subject to change, constitutional?

2. Is the population deviation of 11.9 per cent between the highest and lowest population per legislator consistent with the rulings of this Court in determining equal representation for equal numbers of people?

3. Has the Board of Supervisors of Rockland County made a good-faith effort to achieve precise mathematical equality as required by the rulings of this Court?

Statement

The legislative body of the County of Rockland has statutorily and traditionally been composed of five supervisors, being the duly elected supervisors of each of the five towns, each supervisor having one vote on the County Board. On or about July 12, 1965, an action was commenced by John Lodico, Sr., in the New York State Supreme Court for the County of Rockland to compel the Board of Supervisors to formulate a plan whereby the vote of each Supervisor would be proportionate to the number of persons he represents within his township. The defendant Board of Supervisors removed the action to the U. S. District Court for the Southern District of New York. A request to convene a panel of three judges was granted and after argument heard by the panel, a decision and order was rendered by the Honorable Thomas F. Croake, dated May 20, 1966, declaring the Board of Supervisors to be unconstitutional and ordering the Board of Supervisors to submit a plan of reapportionment to the voters at the November, 1966, election, consistent with

the "one-man, one-vote" doctrine. (*Lodico* v. *Board of Supervisors of Rockland County,* 256 F. Supp. 442). In compliance with this order, the Board established a reapportionment commission which submitted two plans to the Board for consideration. Plan A was a single-member district plan of 16 districts plus the five town supervisors; Plan B was a multi-member district plan which was identical to the plan now before this Court. A public hearing was held to consider Plan B. The testimony was overwhelmingly in favor of Plan A. Subsequently, a new plan was proposed called Plan S, which was a single-member district plan consisting of nine districts with no supervisors serving. At a public hearing on Plan A, the speakers preferred Plan S with a second choice of Plan A. In spite of this, the Board of Supervisors adopted Plan B and placed it on the ballot in November, 1966. It was defeated by the electorate.

In February, 1967, a public hearing was held to consider 1) Plan B, 2) Weighted Voting, 3) County-at-large Plan, 4) Plan S, which had been changed to 17 single-member districts with no supervisors serving. Most of the testimony was in favor of Plan S. A special election was held in April, 1967 with Plan B again on the ballot as well as Plan S. Both were defeated. The criticism of Plan S was that there was no provision for a transitional period and without a County Executive (Rockland County does not have charter government) there would be 17 neophytes serving on the legislature without experience or direction.

Toward the end of 1967, a new reapportionment commission was created. The commission again proposed a 17-member, single-member district plan.

On or about September 26, 1968, Samuel J. Abate, one of the petitioners herein, commenced an action in the New

York State Supreme Court for the County of Rockland, inter alia, to compel the Board of Supervisors to place this reapportionment plan on the ballot at the general election in November, 1968. Defendant Board of Supervisors moved to dismiss the action on the ground of res judicata in that jurisdiction remained with the U. S. District Court. On October 10, 1968, a decision was rendered by the Honorable Joseph F. Gagliardi, Justice of the New York State Supreme Court, staying the State Court action pending a determination by the Federal Court as to its jurisdiction.

In December, 1968, a public hearing was held to consider the single member district plan and a weighted voting plan. Again, the support was overwhelmingly for the single-member district plan. On March 11, 1969, the Board of Supervisors enacted an interim weighted voting plan of reapportionment. On March 12, 1969, a decision was made by Justice Gagliardi accepting jurisdiction of the Abate action based upon a letter transmitted to him by Judge Croake stating that the Federal Court action terminated when the Board of Supervisors submitted a plan of reapportionment to the voters in November, 1966.

On March 14, 1969, the Board of Supervisors submitted its weighted voting plan to the State Supreme Court for approval. On April 16, an order was issued by the Honorable Joseph F. Hawkins, Justice of the New York State Supreme Court, permitting June Molof et al., one of the petitioners herein, to intervene as party-plaintiffs in the action. On May 28, 1969, the weighted voting plan was declared unconstitutional by order of Justice Hawkins, and the Board of Supervisors was directed to submit a new plan to the Court for implementation at the November, 1969, election.

Shortly thereafter, a reapportionment subcommittee of the Charter Commission adopted an 18-member single-

member district plan, with the town supervisors serving for an interim period of two years only. At the following meeting of the Commission, and without apparent reason, this plan was rescinded and the multi-member district plan now before the Court was adopted. One of the members of the Commission resigned in protest and declared that political pressure had been brought to bear on some of the members to persuade them to change their votes in favor of the multi-member district plan. Seven of the 17 commission members filed a minority report in favor of the 18-member single-member district plan.

On June 24, 1969, the Board of Supervisors enacted Resolution No. 311 of 1969 (A1) proposing said multi-member district plan, and it was submitted to Justice Hawkins for approval on July 8, 1969. On July 9, 1969, petitioners Cornelius T. O'Sullivan et al. were granted leave to intervene as party-plaintiffs.

In a decision dated July 21, 1969 and modified July 30, 1969 (A10 and A19) Justice Hawkins approved the multi-member district plan proposed by the Board of Supervisors. All plaintiffs to this action, who are now petitioners herein, objected to the plan as being unconstitutional, based upon the Fourteenth Amendment to the U. S. Constitution and the decisions of this Court.

All plaintiffs appealed this decision to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department. In a decision dated August 26, 1969 (A24), the Appellate Division affirmed the lower court decision, the late Honorable George J. Beldock, Presiding Justice of said Court, dissenting (A25). Basing his dissent on two recent U. S. Supreme Court decisions on reapportionment, *Wells* v. *Rockefeller*, 394 U. S. 542 and *Kirkpatrick* v. *Preisler*, 394 U. S. 526, Justice Beldock held that the 11.9 per cent variance between the highest and the lowest population per legislator in

Rockland County did not satisfy the "one-man, one-vote" principle inasmuch as the Board of Supervisors did not adequately justify the reasons for such variance. He therefore concluded that the plan was unconstitutional.

The decision of the Appellate Division was appealed by all plaintiffs to the Court of Appeals of New York. The Court of Appeals affirmed the decision of the Appellate Division in an opinion dated November 12, 1969 (A34), the Honorable Stanley H. Fuld, Chief Judge of said Court and the Honorable Matthew J. Jasen, Associate Judge of said Court, dissenting (A42). In his dissent, in which Judge Jasen concurred, the Chief Judge rejected the conclusions of the majority of the Court which held that although the permissible variation in population between congressional districts is "almost micrometric", the permissible deviations in the apportionment of state legislatures is broader and in the apportionment of local legislative bodies even broader than those of state legislatures. Judge Fuld stated (A43), "the very same rationale which requires that all votes be accorded equal weight in elections to Congress and state legislatures demands rigorous adherence to the one man, one vote principle in a county-wide election of its legislative body. A resident and voter is undoubtedly concerned with the actions of his county or municipal legislature, as he is with those of Congress or the state legislature."

In addition, Judge Fuld asserted that the potential for inequality inherent in the plan made it not only undesirable, but constitutionally invalid. Alluding to a chart submitted by petitioners June Molof et al., he noted that if the plan had "been in effect in 1950, the deviation would have been 26%; in 1957, 22%; in 1963, 27%; and in 1966, 26%." (A47)

All plaintiffs to this action petitioned this Court for a Writ of Certiorari on January 5, 1970. Certiorari was granted on February 24, 1970.

The multi-member district plan now in question was implemented at the general election in November, 1969, and the County Legislature of Rockland County is now sitting pursuant thereto.

Summary of Argument

The Court of Appeals of New York has approved a multi-member district plan of reapportionment for Rockland County which petitioners believe is unconstitutional under the principle of equal representation for equal numbers of people. Under this plan, the deviation between the highest and lowest population per legislator is 11.9 per cent, a figure much higher than that rejected by this Court in *Kirkpatrick* v. *Preisler,* 394 U. S. 535. *Kirkpatrick* is applicable to districting of local legislative bodies, not only to congressional districting because it is merely a definition of the "as nearly as is practicable" standard set forth in *Wesberry* v. *Sanders,* 376 U. S. 1. This standard was applied to local legislatures in *Avery* v. *Midland County,* 390 U. S. 474; therefore, any definition of that standard should likewise be applied to local legislatures.

Under the ruling of *Kirkpatrick,* it is incumbent upon a legislature to show that a good-faith effort has been made to achieve precise mathematical equality. Respondents have failed to show such good-faith effort. They initially created district lines as being coterminous with town boundary lines without regard to population figures or equality of representation. Petitioners, on the other hand, have presented a single-member district plan in which they have made a good-faith effort to achieve precise equality and, in fact, have produced a districting map in which there is only a 3.5 per cent deviation between the highest and lowest population per legislator.

Any multi-member district plan in which district boundaries are static but the population within each district

is subject to change, is invalid because of the possibility for inequality inherent in such a plan. If Rockland County had had such a plan in prior years, the inequality of representation would have been very great (see petitioner's brief, pg. 22), as indeed it could be in any such plan.

ARGUMENT

I.

Rockland County's multi-member district plan is unconstitutional under the "one-man, one-vote" doctrine.

The "one-man, one-vote" principle was originally set by this Court in *Wesberry* v. *Sanders*, 376 U. S. 1 (1964), a congressional districting case, in which a Georgia statute was declared invalid because the population in each district created by that statute was so disproportionate that a resident in one district did not have an equal voice in the election of his representative as did a resident in another district. This Court stated that "as nearly as is practicable" one man's vote is to be worth as much as another's.

This principle, originally applied only to congressional districting, was extended to the apportionment of state legislatures in *Reynolds* v. *Sims*, 377 U. S. 533 (1964). In Reynolds, this Court held that the Equal Protection Clause of the Fourteenth Amendment to the U. S. Constitution guarantees to each voter an equal voice in his state government. The Court stated:

> "As long as ours is a representative form of government and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators

> in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, *if a state should provide that the votes of citizens in one part of the state should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the state, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted.*" (Emphasis added.)

Again, the Reynolds case involved glaring discrepancies among the populations of the various districts.

This Court applied the basic principle of *Wesberry* to units of local government in *Avery* v. *Midland County*, 390 U. S. 474 (1968), and held that every person voting for a local legislator has the right to a vote of substantially equal weight to every other vote so cast.

In 1969, this Court was faced with the problem of defining the "as nearly as is practicable" standard set forth in Wesberry. *Kirkpatrick* v. *Preisler*, 394 U. S. 526 (1969) and *Wells* v. *Rockefeller*, 394 U. S. 535 (1969) involved congressional redistricting in Missouri and New York, respectively. For the first time the Court was faced with districts in which there were not glaring discrepancies of population, but rather small percentage deviations. In *Kirkpatrick*, for example, the most populous district was 3.13 per cent above the mathematical ideal, and the least populous was 2.83 per cent below, amounting to a 5.96 per cent variance between the highest and lowest population per legislator. The ratio of the largest to the smallest district was 1.06 to 1.

The Court rejected the Missouri and New York plans on the grounds that each state had not made a "good-faith effort to achieve precise mathematical equality"; that unless population variances are shown to have resulted despite such effort, "the State must justify each variance, no matter how small." The Court stated:

> "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes."

In the case at bar, the Rockland County Board of Supervisors has proposed a reapportionment scheme of multi-member districting in which the percentage deviation between the highest population per legislator and the lowest population per legislator is 11.9 per cent (petitioner's brief, pg. 4), a figure much higher than that rejected by the Court in *Kirkpatrick*, supra. The resident in the district of Orangetown which is 7.1 per cent below the mathematical ideal does not have equality of representation with the resident of the district of Clarkstown, which is 4.8 per cent above the mathematical ideal.

The Rockland County Board of Supervisors has relied on *Fortson* v. *Dorsey*, 379 U. S. 433 and *Burns* v. *Richardson*, 384 U. S. 73, to prove the validity of its multi-member district plan. It is respectfully submitted that both cases are distinguishable from the one at bar. In the *Fortson* case, this Court held that "Where the requirements of *Reynolds* v. *Sims* are met," a multi-member district scheme will not be held invalid unless invidious discrimination, either racial or political, is shown. Indeed, the districts were substantially equal. Clearly, in the Rockland County plan, the requirements of *Reynolds* v. *Sims* and related cases have not been met. The districts are

far from equal. In addition, in the *Fortson* case, although state senators were elected at large within the county, each senator was required to be a resident of his own senatorial district. Thus, geographical distribution of senators throughout each highly populous county was assured, although the senators were elected at large by the constituents of the entire county. In the Rockland County plan, such residence requirements do not exist. It is entirely possible, for example, that all six representatives allocated to the Town of Ramapo could reside within the village of Spring Valley. Thirdly, in the *Fortson* case, multi-member districts were utilized in only one house of a bicameral legislature. In Rockland County, there is only a unicameral legislative body.

Burns v. *Richardson*, supra, was decided in the year 1966, three years prior to the holdings of *Kirkpatrick* and *Wells*. Moreover, the redistricting scheme was based on *voters* per district, not on population per district.

It has been contended by respondents that the *Kirkpatrick* and *Wells* cases apply only to congressional districting and only to single-member, not multi-member district plans. Both arguments are spurious.

As heretofore cited, the basic principle of "one-man, one-vote" was originally applied to congressional districting and later extended to state and local districting. It logically follows, therefore, that any definition or elucidation of the basic principle would naturally apply to any case which is an extension of that principle. In fact, in *Hadley* v. *The Junior College District of Metropolitan Kansas City, Mo.*, decided February 25, 1970, this Court stated:

> "• • • that in situations involving elections, the states are required to insure that each person's vote counts as much, in so far as it is practicable,

> as any other person's. We have applied this principle in congressional elections, state legislative elections, and local elections."

The Court, therefore, reiterated the "as nearly as is practicable" standard as applying to congressional, state and local districting. Indeed, the definition of that standard would necessarily apply to congressional, state and local districting.

If respondents' second contention is accepted, that the foregoing principle applies only to single-member district plans and not to multi-member district plans, then it would follow that residents in areas having multi-member district plans are not entitled to equal representation but residents in areas of single-member districts, are. How simple it would be for any legislature, either state or local, to circumvent the mandate of this Court by merely creating a system of multi-member rather than single-member districting. It is respectfully submitted that this Court never intended such a result.

II.

The Rockland County Board of Supervisors has not made a good-faith effort to achieve precise mathematical equality of representation.

Respondents have not shown that a good-faith effort has been made to achieve precise mathematical equality. Indeed, as compared with the 11.9 per cent deviation of the present plan, petitioners have proposed a plan having only a 3.5 per cent deviation. Respondents' only rationale for implementing the multi-member district plan is to retain town boundaries as county legislative districts. This concept was rejected by this Court in *Wells* v.

Rockefeller, supra, where the New York State legislature tried to justify its mathematically unequal districts by stating that one of the purposes of its redistricting scheme was to retain certain county lines as district boundaries. The Court stated:

> "To accept a scheme such as New York's would permit groups of districts with defined interest orientations to be overrepresented at the expense of districts with different interest orientations. Equality of population among districts in a sub-state is not a justification for inequality among all the districts in the State. Nor are the variations in the 'North country' districts justified by the fact that these districts are constructed of entire counties."

Respondents have not shown sufficient reasons for retaining town lines as boundaries for their districting plan. They claim that county government cannot operate effectively and efficiently without town representation. This reasoning negates the basic premise underlying county government, which is the management of and services to the county as a whole, not to individual townships. Each town has its own government to fulfill the basic needs of its constituency, and town problems should not be delegated to the county as a whole.

It is true that traditionally and historically in New York State, county legislatures were composed of the supervisors of the individual towns. But the reason for this was that counties were small and had few powers. In fact, in areas where counties still perform relatively few functions, this reasoning would still prevail. However, Rockland County is no longer in that category. According to the 1969 Federal census, the population of Rockland County is 218,804. Its budget for the fiscal year 1970 is approximately $30 million. Its services include

road-building, sewers, health, mental health, and the like. Measures have been proposed for a county police force and a county transportation authority. Certainly, Rockland cannot be considered a small, rural community. Its legislature should be concerned only with county problems, not town problems.

In many instances, town representation on the county legislature, as heretofore existed, has been detrimental to the county as a whole.

In the construction of the county sewer system, the county is responsible for the trunk lines and each town constructs its own lateral connections. Thus one job has been in the hands of six diverse authorities, each responsible for letting its own contracts, with the result that charges to the residents of each town have not been as proportionately equal as they might have been had one authority—the county—been in full charge.

In another area, the Metropolitan Transportation Authority proposed an enlarged airport for the county. The town-oriented legislature turned the proposal down, basing its action not on whether the county needed the airport but rather on the fact that no town wanted it in its own backyard.

Proponents of a town-oriented county legislature hold that towns should have a voice on the county level in determining tax equalization rates. Yet, as a practical matter, the county legislature has eschewed a voice in this matter and has always accepted the figures proposed by the State of New York for determining these rates.

Respondents allege the necessity for liaison between town and county government in order to facilitate the establishment of joint facilities and joint services. But there is no reason to assume, and the respondents have not stated any reason, that a county representative elected

from a single-member district will have less interest in the establishment of joint facilities and joint services than will a county representative elected from the township as a whole. In fact, the county representative elected at large from the township has no greater knowledge of or control over the town government than does the representative of the single-member district. He is not a town officer and therefore cannot influence the government of the town.

It is obvious from the foregoing that respondents have not shown that they made a "good-faith effort" to achieve equality of representation. As stated by the Honorable Stanley H. Fuld, Chief Judge of the Court of Appeals of New York, in his dissent to the majority opinion in this case (A47):

> "I recognize, of course, that there may be historical and, perhaps, functional reasons for preserving the identity of the towns in a county legislative body—even though no such reasons have been shown in this case and even though the towns would remain independent, coordinate governments under any scheme. All that is required is that a plan be sufficiently flexible to give all the voters of the County an equal voice in its government. Population, as the *Reynolds* case indicates, need not be the only factor to be considered but it must be the *controlling* factor * * * Here, quite obviously, population was 'submerged as the controlling consideration' * * *."

III.

A multi-member district plan is unconstitutional if its district lines are static but its population is subject to change.

Any multi-member district plan, such as the one presently before this Court, wherein the district lines are static but the population within each district in subject to change, is inherently unconstitutional. The reason for this is that at any given time, due to increases or shifts in population among the districts, the percentage deviation between the highest and lowest population per legislator could conceivably be so great as to render the plan invalid without regard to whether a good-faith effort has indeed been made by the proponents.

For example, if the multi-member district plan had been in effect in Rockland County since 1950, the deviation between the highest and lowest population per legislator would have been 26 per cent in 1950, 22 per cent in 1957, 6 per cent in 1960, 27 per cent in 1963, 26 per cent in 1966 and 12 per cent in 1969 (see petitioner's brief, pg. 22). Thus, in four of the six census years, population deviations would have far exceeded 20 per cent. Projecting this plan into the future, according to population figures supplied by the Rockland County Planning Board for the year 1980, the deviation would be 52 per cent (population of Stony Point, 18,000; Haverstraw, 27,500; Clarkstown, 80,000; Orangetown, 62,500; Ramapo, 112,000).

The possibilities for inequality inherent in such a multi-member district plan are infinite. As noted by Chief Judge Fuld (footnote, pg. A47), it is conceivable that there could be as much as a 99.96 per cent deviation under certain circumstances. To permit this type of plan to exist, would

be an invitation to constant legal action inasmuch as it could be contested every time population figures are shown to create large inequalities. Petitioners believe that a legislative reapportionment scheme should not be subject to constant constitutional question but should be flexible enough to meet the needs of population changes.

IV

The only valid reapportionment plan for Rockland County is the single-member district plan.

Petitioners believe that there is only one constitutionally valid and representative form of government for Rockland County—the single-member district plan. Under this plan, the entire county would be divided into districts of substantially equal population, each district being allocated one legislator. This plan has certain advantages not obtainable under other systems of apportionment:

1. It would insure complete compliance with this Court's mandate of "one-man, one-vote."

2. Since each district would be comparatively small, it would permit representation from each area of the county on an equal basis and afford each resident an opportunity to be heard by his district legislator.

3. The small districts would lure qualified persons within each district to run for the office of county legislator who would not otherwise have either the funds or the time to run for the same post on a town-wide basis.

4. The number of legislators would not be subject to change, but an impartial commission could be created to change district boundaries as shifts or increases in population occur. Under the multi-member district plan,

the number of legislators could increase to such an extent that it would become unwieldly in addition to the drain it would create on the county budget.

5. The majority of the public has been in favor of this plan since the Board of Supervisors was ordered to reapportion itself in 1966. As stated heretofore, not only the public, but two reapportionment commissions, have supported the single-member district plan; yet, the Board of Supervisors has refused to accept their recommendations.

Petitioners have prepared an 18-member, single-member district map based upon the 1969 Federal Census population figures. The deviation between the highest and lowest population per legislator under this plan would be 3.5 per cent. In addition, the map was drawn with a view to keeping individual villages as districts wherever possible and to keeping town lines intact. In fact, town lines were crossed in only three of the 18 districts and one of these was in order to keep the villages of the Nyacks intact.

CONCLUSION

The Rockland County multi-member district plan should be invalidated because it does not afford equal representation for equal numbers of people under the rulings of this Court. Moreover, any multi-member district plan in which the district boundaries are not subject to change but the population within each district is, should be invalidated because of the possibilities for inequality inherent in the nature of the plan. A single-member district plan should be implemented in Rockland County similar to the one proposed by petitioners in its map appended hereto.

Respectfully submitted,

Doris Friedman Ulman,
Counsel for Petitioners,
June Molof, et al.

Population Table

Town	*1950*	*1957*	*1960*	*1963*	*1966*	19
Stony Point	5,485	8,132	8,739	10,316	11,704	12
Haverstraw	12,979	15,073	16,632	17,538	20,659	23
Orangetown	34,554	39,034	43,172	47,051	49,852	50
Clarkstown	15,674	24,280	33,196	42,749	51,883	57
Ramapo	20,584	27,264	35,064	44,375	58,626	73

Population Per Legislator

Town	*1950*	*1957*	*1960*	*1963*	*1966*	19
Stony Point	5,485	8,132	8,739	10,316	11,704	12
Haverstraw	6,490	7,537	8,316	8,769	10,330	11
Orangetown	5,776	7,807	8,634	9,410	12,463	13
Clarkstown	5,225	8,093	8,299	10,687	12,971	11
Ramapo	5,146	9,088	8,766	11,094	11,725	12

Ratio of Largest to Smallest Population Per Legislator

1950	1.26 to 1
1957	1.22 to 1
1960	1.06 to 1
1963	1.27 to 1
1966	1.26 to 1
1969	1.12 to 1